REMARKS

While Applicant continues to maintain and assert the arguments presented in the Appeal Brief filed October 20, 2008, Applicant respectfully requests reopening of prosecution, entry of the new claims, and reconsideration of the instant application in view of the following remarks:

The following claims are *pending*: <u>41-57</u>.

The following claims are *independent*: <u>41, 49 and 57</u>.

The following claims have previously been *withdrawn*: <u>2-6, 10-12, 15-19, 28-34, 36-38 and 40</u>.

The following claims have previously been *cancelled* without prejudice or disclaimer: <u>1, 7-9, 13, 14 and 20-27</u>.

Please *cancel* the following claims without prejudice or disclaimer: <u>2-6, 10-12, 35 and 39</u>.

Please *add new* claims <u>41-57</u> Applicant submits that these new claims are supported throughout the originally filed specification and drawings and that no new matter has been added.

Claim Rejections - 35 U.S.C. § 103

The Final Office Action dated May 22, 2008 and the Examiner's Answer dated January 06, 2009 rejected claims 35 and 39 under 35 U.S.C. § 103(a) as being unpatentable over Nordlicht et al., US Patent Publication No. 2002/0194115 (hereinafter "Nordlicht"), and

in further view of Securities Exchange Act of 1934, Rules 11Ac1-5 and 11Ac-1-7 (hereinafter "Exchange Act").

Applicant respectfully submits that claims 35 and 39 have been cancelled by way of this amendment response without prejudice or disclaimer. As such, Applicant submits that the Examiner's rejections on claims 35 and 39 are considered moot.

Applicant submits that new independent claims 41, 49 and 57 are patentably distinct from the prior art of record for at least the following reasons.

Independent claim 41 recites, *inter alia*,

> A processor-implemented method for monitoring and evaluating an option limit order, comprising:
>   ...
>   utilizing the received option market data to identify at least one of trade-through transaction relevant to the option limit order and a trade-at transaction relevant to the option limit order, wherein the at least one of a trade-through and a trade-at transaction occurs at a better price than the limit price for the option limit order; and
>   generating via a processor an alert, the alert including identity of the identified at least one of trade-through transaction relevant to the option limit order and trade-at transaction relevant to the option limit order.

Instead of discussing the recited claim elements, Nordlicht discusses a trading system that maintains a list of buyers for a seller and a list of sellers for a buyer. The system then matches a buyer's bid order to an ask order of a seller in the buyer's list and executes a trade if the bid order is not less than the ask order (Nordlicht, Abstract). As such, Applicant submits that Nordlicht's trading system does <u>not</u> discuss the claimed "trade-at or trade-through transactions" as recited in independent claim 41.

Furthermore, in direct contrast to the claimed elements, Exchange Act discusses requiring a broker to disclose to its customer "in writing at or before the completion of the transaction, when the customer's order for listed options was executed at a price inferior to a better published quote and the better published quote available at the time" (Exchange Act, V, page 31, paragraph 3). However, Applicant submits that the disclosure requirement of Exchange Act is different from the claimed elements as the Exchange Act's disclosure requirement pertains to an order executed at a price that is _inferior_ to better published quote available at the time of the transaction as opposed to the claimed "... utilizing the received option market data to identify at least one of trade-through transaction relevant to the option limit order and a trade-at transaction relevant to the option limit order, wherein the at least one of a trade-through and a trade-at transaction occurs at a better price than the limit price for the option limit order... [and] generating via a processor an alert, the alert including identity of the identified at least one of trade-through transaction relevant to the option limit order and trade-at transaction relevant to the option limit order" as recited in independent claim 41.

Accordingly, Applicant submits that Nordlicht and Exchange Act, taken alone or in combination, fails to discuss or render obvious at least the claimed elements recited in independent claim 41. Accordingly, Applicant respectfully requests reconsideration and withdrawal of these grounds of rejection.

Although of different scope than claim 49, Applicant submits that claim 49 is also patentable over Nordlicht in view of Exchange Act, taken alone or in combination. For example, independent claim 49 recites, _inter alia_,

A processor-implemented method comprising:
...
comparing via a processor the tabulated fulfillment data to the tabulated at least one of trade-through data and trade-at data to generate a performance measurement, wherein the comparing includes dividing the total number of contracts in the tabulated fulfillment data by the total number of contracts in the tabulated at least one of trade-through data and trade-at data.

Instead of discussing the claimed elements, Nordlicht discusses a trading system that matches a buyer's bid order to a seller's ask order, where the buyer and the seller are in each other's list of sellers and buyers. However, Applicant submits that Nordlicht's system merely discusses comparison of bid/ask orders and sellers and buyers to determine if each is in the other list. For example, Nordlicht discusses "... the market server may compare both the best bid/best ask and the Firm for any one offer..." (Nordlicht, [0058]). Furthermore, Exchange Act, which discusses regulations that regulate exchanges and broker-dealers also fails to remedy the deficiencies identified in Nordlicht.

Accordingly, Applicant submits that Nordlicht and Exchange Act, taken alone or in combination, fails to discuss or render obvious at least the claimed elements "... comparing via a processor the tabulated fulfillment data to the tabulated at least one of trade-through data and trade-at data to generate a performance measurement, wherein the comparing includes dividing the total number of contracts in the tabulated fulfillment data by the total number of contracts in the tabulated at least one of trade-through data and trade-at data" as recited in independent claim 49. Accordingly, Applicant respectfully requests reconsideration and withdrawal of these grounds of rejection.

Although of different scope than claim 41, Applicant submits that claim 57 is also patentable over Nordlicht in view of Exchange Act, taken alone or in combination, for at least

similar reasons as discussed above identifying deficiencies in the applied references with

regard to independent claim 41. For example, independent claim 57 recites, *inter alia*,

> An apparatus for monitoring and evaluating an option limit order, comprising:
> a memory;
> a processor disposed in communication with said memory, and configured to issue a plurality of processing instructions stored in the memory, wherein the processor issues instructions to:
> ...
> utilize the received option market data to identify at least one of trade-through transaction relevant to the option limit order associated with the order identifier and a trade-at transaction relevant to the option limit order associated with the order identifier, wherein the at least one of a trade-through and a trade-at transaction occurs at a better price than the limit price for the option limit order; and
> generate an alert, the alert including identity of the identified at least one of trade-through transaction relevant to the option limit order and trade-at transaction relevant to the option limit.

Applicant respectfully submits that at least these claim elements from independent

claim 57 are also not discussed or rendered obvious by Nordlicht, which discusses a trading

system that matches select buyers' bid orders to select sellers' ask orders or by Exchange Act,

which discusses regulations that regulate exchanges and broker-dealers, taken alone or in

combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of

this basis of rejection.

Furthermore, Applicant submits that claims 42-48 and 50-56, which depend directly

or indirectly from independent claims 41 and 49 are also not discussed or rendered obvious

by Nordlicht, which discusses a trading system that matches select buyers' bid orders to select

sellers' ask orders or by Exchange Act, which discusses regulations that regulate exchanges

and broker-dealers, taken alone or in combination, for at least similar reasons as those

discussed above identifying deficiencies in the applied references with regard to the

independent claims. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this basis of rejection.

CONCLUSION

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 41-57, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements and/or bases for rejection were not discussed as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art and reserves the opportunity to more particularly traverse, remark and distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to an Office Action objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Office Action objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no

such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-440CP1. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-440CP1.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
CHADBOURNE & PARKE LLP

Dated: January 11, 2010   By:/Daniel C. Sheridan/
                                           Daniel C. Sheridan
                                           Registration No.: 53,585

Correspondence Address:
CHADBOURNE & PARKE LLP
30 Rockefeller Plaza
New York, NY 10112

212-408-5100 (Telephone)
212-541-5369 (Facsimile)
patents@chadbourne.com (E-mail)